

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

|                                 |   |                              |
|---------------------------------|---|------------------------------|
| <b>DARRYL PERRY,</b>            | : | <b>CIVIL NO. 1:18-CV-870</b> |
|                                 | : |                              |
| <b>Plaintiff</b>                | : | <b>(Chief Judge Conner)</b>  |
|                                 | : |                              |
| <b>v.</b>                       | : |                              |
|                                 | : |                              |
| <b>DAVID J. EBBERT, et al.,</b> | : |                              |
|                                 | : |                              |
| <b>Defendants</b>               | : |                              |
|                                 | : |                              |

**ORDER**

AND NOW, this 19th day of February, 2019, upon consideration of defendants' motion (Doc. 11) to dismiss pursuant to Federal Rule of Civil Procedure 12(b) or, in the alternative, for summary judgment pursuant to Federal Rule of Civil Procedure 56, and it appearing that whether plaintiff has exhausted his administrative remedies in accordance with the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a), is at issue, and it further appearing that plaintiff seeks to excuse compliance with the exhaustion requirement (see Docs. 1, 20), and the court noting that it must provide the parties notice and an opportunity to be heard on the exhaustion issue, see Paladino v. Newsome, 885 F.3d 203 (3d Cir. 2018), it is hereby ORDERED that the court places the parties on notice that it may consider exhaustion in its role as fact finder under Small v. Camden Cty., 728 F.3d 265 (3d Cir. 2013), and the parties may supplement the record within twenty (20) days from

the date of this order with any additional supporting evidence relevant to exhaustion of administrative remedies.

/S/ CHRISTOPHER C. CONNER  
Christopher C. Conner, Chief Judge  
United States District Court  
Middle District of Pennsylvania